

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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Order Instituting Rulemaking to Promote Policy
and Program Coordination and Integration in
Electric Utility Resource Planning.

Rulemaking 04-04-003
(Filed April 1, 2004)

Order Instituting Rulemaking to Promote
Consistency in Methodology and Input
Assumptions in Commission Applications of
Short-run and Long-run Avoided Costs,
Including Pricing for Qualifying Facilities.

Rulemaking 04-04-025
(Filed April 22, 2004)

**OPENING COMMENTS OF PACIFIC GAS AND ELECTRIC COMPANY (U 39 E)
ON ALTERNATE PROPOSED DECISION OF COMMISSIONER GRUENEICH**

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Pursuant to Rule 14.3 of this Commission's Rules of Practice and Procedure, Pacific Gas and Electric Company (PG&E) submits these comments on the alternate proposed decision (APD) dated August 20, 2007. PG&E's proposed Findings of Fact and Conclusions of Law are attached as Appendix A.

I. INTRODUCTION AND SUMMARY OF COMMENTS.

The APD is a giant step backward from the progress the proposed decision (PD) issued on April 24 would have made toward market pricing for Qualifying Facilities (QFs) and would raise short-run avoided costs (SRAC) to PG&E's customers by about \$50 million annually compared to the revised PD.^{1/} Rather than motivating QFs and cogeneration resources to become more efficient, the APD would unjustifiably continue to give substantial above-market subsidies to the mature QF community.

The revisions the APD would make to the revised PD's Market Index Formula (MIF) increase the energy price from \$59.6 per MWh to \$65.1 per MWh, in addition to the capacity

^{1/} The PD Administrative Law Judge Halligan issued on April 24, 2007 was revised on July 20, 2007.

payments QFs receive.^{2/} By using a hybrid of a market-based heat rate and an administratively determined heat rate, the APD increases energy prices far above the market prices that today represent the utilities' avoided costs.^{3/} Thus the APD's formula represents a significant departure from the revised PD's "market index."

By way of comparison, the APD yields an energy price that is more than \$1.50 MWh higher than the energy formula in the settlement the Commission approved just last year affecting more than 120 QF contracts representing "almost 52.04% of generation deliveries from all QFs currently under contract with PG&E."^{4/} If the Commission were to adopt the APD, it would reward the non-settling parties and punish those QFs who settled. Such a result could irreparably undermine the Commission's historical approach of promoting settlements and its efforts to encourage parties to engage in alternative dispute resolution processes like the one that ultimately produced the IEP Settlement.

The APD would also adopt another standard contract for new QFs sized under 25 MW "without an oversubscription limitation."^{5/} Such an open-ended obligation could result in another QF "gold rush" like the one that, as the APD ironically notes, forced the Commission "to suspend all of its fixed forecast standard offers due to oversubscription."^{6/} Another standard offer contract also undermines the IEP Settlement in which the settling QFs agreed to waive their right to demand contracts like those the APD proposes pursuant to the Public Utility Regulatory Policies Act (PURPA) following the expiration of their existing contract.^{7/}

^{2/} The revised PD's MIF yields a price of \$59.6 per MWh.

^{3/} APD p. 63.

^{4/} D.06-07-032 mimeo pp. 4-5. The decision approved a settlement between the Independent Energy Producers Association (IEP) and PG&E. The IEP Settlement's formula yields an energy price of \$64.7 per MWh compared to the APD's \$65.1 per MWh using the correct AHR.

^{5/} APD p. 2.

^{6/} APD p. 16.

^{7/} D.06-07-032 mimeo p. 7.

The already high proposed capacity prices for new long-term commitments or contract renewals, combined with the well-above market heat rates for energy, creates additional stranded costs exposure for bundled customers.

As discussed below, PG&E strongly urges the Commission to reject the APD and adopt the revised PD. If the Commission is considering the APD, it should change the energy formula in the manner described in section IV, and should eliminate the additional standard contract for QFs sized under 25MW.

II. THE APD’S MIF IS FLAWED IN SEVERAL SIGNIFICANT WAYS.

The APD would calculate the heat rate in the MIF “by taking an average between an NP15/SP15-derived value as generally proposed by SCE, and the existing administratively determined heat rate pursuant to D.96-12-028.”^{8/} The MIF would assign a 50 percent weighting to a Market Heat Rate (MHR) and the same weighting to the Administrative Heat Rate (AHR).^{9/} This approach is problematic in several respects.

The APD would derive the AHR using a formula that is now more than 10 years old. Decision 96-12-028 employed a “[s]tarting energy price, based on 12-month averages of recent, pre-January 1, 1996 SRAC energy prices....”^{10/} PG&E’s AHR is higher than the other two utilities. Using such out-dated data and giving it a weighting of 50 percent cannot result in an energy price that reflects the utilities’ current SRAC, and institutionalizes a higher SRAC for PG&E.

Employing an AHR that relies in part on “pre-January 1, 1996 SRAC prices” fails to recognize the substantial changes that have occurred since then with respect to PG&E’s alternative sources of supply. During the “pre-January 1, 1996” period, PG&E had not yet divested itself of its gas-fired power plants. Today, long after the divestiture, PG&E relies on the NP-15 market for its incremental energy needs. As the Commission has recognized, “When a

^{8/} APD p. 66.

^{9/} APD pp. 66-67.

^{10/} D.96-12-028; 69 CPUC 2d 546, 557, Attachment 2.

utility changes the source of energy it would otherwise rely upon, it is appropriate that it change the basis on which it calculates avoided costs.”^{11/} The APD’s reliance on an outdated AHR formula and giving it a weighting equal to the MHR fails to recognize the changes in PG&E’s supply alternatives; therefore, the APD’s formula does not reflect current SRAC.

In Decision 96-12-028 the Commission said “We are very interested in moving from an administratively determined avoided cost price towards one based on market pricing.”^{12/} The APD’s 50/50 weighting of the MHR and AHR significantly retards the Commission’s stated goal of moving toward market-based pricing for QFs.

The APD’s AHR is 9,794 Btu for PG&E.^{13/} This is far in excess of the IEP Settlement heat rate of 8,700 Btu.^{14/} In approving the IEP Settlement, the Commission stated “This Decision does not prejudice the Commission’s ability to make findings in subsequent Decisions that differ from those in this Decision adopting the Settlement Agreement.”^{15/} The Commission, however, cannot ignore the fact that, at least for the more than 120 QF contracts subject to the IEP Settlement, a heat rate far lower than the APD’s heat rate was deemed a reasonable component in the derivation of avoided costs.

The 50/50 weighting of the MHR and AHR in the APD not only increases PG&E’s energy costs beyond its true avoided costs, it creates disincentives for QFs to be as efficient as possible, to reinvest the above-market payments they have been receiving for two decades in

^{11/} D.96-02-070; 65 CPUC 2d 31, 32.

^{12/} D.96-12-028; 69 CPUC2d at p. 552.

^{13/} APD p. 67. The AHR stated in the APD is incorrect. It should be 9,464 Btu/kWh, not 9,794 Btu/kWh. During the pre-1996 period used to determine the Transition Formula adopted in Decision 96-12-028, PG&E’s incremental energy rates (IER) averaged 10,171.5 Btu/kWh for the six-month winter pricing formula and 8,756.5 for the six-month summer season pricing formula. Thus, the annual average IER adopted in the D.96-12-028 formula was 9,464.Btu/kWh. PG&E’s adopted formula relied on pre-1996 IER values from 1994 and 1995, which the Commission adopted in Decisions 93-12-044 and 94-12-047, respectively.

^{14/} D.06-07-032, mimeo p. 5.

^{15/} Id, mimeo p. 2; and see mimeo p. 17, Conclusion of Law No. 3.

newer, more efficient technologies, and to fully capture the market value of steam in their cogeneration processes. As the Commission stated in Decision 01-03-067:

Setting rates above the utility's avoided cost has at least two harmful effects. First, such rates may cause a rise in retail rate, which would constitute a ratepayer subsidy to QFs. Such subsidies of QFs are prohibited under PURPA. (Citation omitted.) Second, less efficient QFs attracted by high rates may displace more efficient non-QF sources, an effect also at odds with PURPA.^{16/}

Finally, the APD's ostensible reason for incorporating an administratively determined heat rate into its MIF is its conclusion that "using NP15/SP15 prices alone would likely result in SRAC prices that understate utility avoided costs, as they do not include the full range of generation resources in the electricity industry today and do not include out of market transactions."^{17/} To remedy these perceived deficiencies, the APD relies on an AHR weighted at 50 percent and ignores the fact that QFs also receive substantial capacity payments with far fewer performance requirements than resource adequacy products. The APD admits, however, that the NP15 market is PG&E's supply source for incremental energy:

Regardless of the resource stack, the utility's avoided cost for a given hour becomes the market price. The market price that PG&E uses to determine what resources are dispatched in northern California is the NP15 price. If the dispatch decision is made day-ahead, then the price is the day-ahead NP15 price. If the dispatch decision is made hour-ahead, then the price is the hour-ahead NP15 price.^{18/}

The QFs' claims that the NP15 market may not include the full range of generation sources or out of market transactions or that it is thinly traded or that PG&E may buy a relatively small increment of supplies from that market are irrelevant under PURPA. PG&E secures its incremental supplies from the NP15 market, therefore the cost of those supplies represent PG&E's avoided cost.

^{16/} D.01-03-067, mimeo p. 23, fn 15; emphasis added.

^{17/} APD p. 63.

^{18/} APD p. 55.

III. THE APD UNDERMINES THE COMMISSION’S COMMITMENT TO SETTLEMENTS AND ALTERNATIVE DISPUTE RESOLUTION.

As the Commission has long recognized, “There is a strong public policy favoring the settlement of disputes to avoid costly and protracted litigation.”^{19/} The Commission’s commitment to settlement is evidenced by its endorsement of Alternative Dispute Resolution approaches and the adoption of processes “to encourage its more frequent and systematic application in formal proceedings....”^{20/}

In this case, “the Commission encouraged all the parties to the QF proceedings to explore settlement possibilities.”^{21/} Given this strong encouragement from the Commission and despite “factors that have fueled the long and vitriolic dispute between all the utilities and all the QFs in general, and between PG&E and IEP specifically....,” PG&E and IEP were able to reach the settlement approved in Decision 06-07-032.^{22/}

The QFs the APD would affect are those who did not settle and chose instead to continue the litigation. If adopted, the APD would punish the settling parties as the comparison table below shows.^{23/}

	Energy Price	All-in Price
IEP Settlement	\$64.7 MWh	\$68.6 MWh
APD (heat rate corrected)	\$65.1 MWh	\$69.0 MWh

^{19/} D.88-12-083; 30 CPUC2d 189, 221-222.

^{20/} Resolution ALJ-185, dated August 25, 2005, p. 1.

^{21/} D.06-07-032, mimeo p. 3.

^{22/} D.06-07-032, mimeo p. 9.

^{23/} The calculation of the energy prices for the IEP Settlement is straightforward. On a monthly basis, the specified heat rate and variable O&M costs, as well as historical bidweek and forward gas prices were used to calculate the energy price. The all-in price reflects this same energy price plus a monthly capacity payment derived from the APD’s value allocated by season. The monthly values for the energy and all-in prices were then averaged to get the reported annual average.

The calculation of the energy prices for the APD is based on the formula described in the decision. The input energy prices (electricity and gas) were based on the appropriate historical and forward prices for electricity and gas. The correct value of the PG&E historic heat rate, 9,464 Btu/kWh, was also used. The O&M costs used were specified in the decision. For the all-in costs, the capacity value specified in the decision was translated into monthly values using current capacity allocation factors. The monthly values were then averaged resulting in the annual value reported.

In a letter to the Commissioners dated September 5, 2007, IEP claims that comparing the prices in the IEP Settlement with prices in the APD is an “apples to oranges” comparison. This is not so.

The IEP Settlement resolved all the issues addressed in this proceeding, just as the APD would do. It is true that the IEP Settlement resolved two discrete claims from Rulemaking 99-11-022 that PG&E had against the QFs, but IEP has consistently argued that the claims are without merit.^{24/} IEP now appears to admit that the claims are valid and have value. This value is offset, however, by the fact that in the IEP Settlement, the settling QFs waived their right to demand contracts like the standard contracts the APD would give the non-settling QFs.

Moreover, the APD itself recognizes that a comparison of its proposed pricing with the IEP Settlement is a valid comparison, and makes just such a comparison in Table 7.^{25/}

Adoption of the APD would deal a serious blow to the Commission’s efforts to encourage settlement generally, and a mortal blow to future efforts to settle any QF-related issues at all, to say nothing of the contentious issues like those in this proceeding.

IV. THE COMMISSION MUST ALTER THE APD’S MARKET INDEX FORMULA.

For all the reasons discussed above, the Commission should reject the APD’s proposed 50/50 weighting of the MHR and AHR. It is possible, however, to remedy the APD’s shortcomings as PG&E discusses below.

First, to provide for a consistent view of the forward prices, PG&E urges the Commission to use the average of two months of price quotes for the delivery month as the basis for the calculation of the MHR rather than a 24-month average. For example, the forward prices quoted on each trading day in June and July for delivery in August would be used to calculate the MHR for August. There is no publication that provides the 24 individual months of forward prices that

^{24/} The Commission discusses these claims and their background in Decision 07-08-008, mimeo pp. 2-8.

^{25/} APD p. 98.

the APD would require. Two months of forward prices for the third month, however, will reflect most closely what the market views as prices for the upcoming third month.

The APD claims that utilities may be able to affect the market price.^{26/} The utilities are required to conduct least-cost dispatch and meet the California Independent System Operator's tariff Amendment 72. Therefore, the suspicion that utilities can affect the market to manipulate QF pricing is baseless. The use of two months of price quotes rather than 24 reduces the potential for any party, whether the utilities or the QFs, to affect the market because there are many more trades in the two month period than in the latter months of a 24 month period when only a few trades may influence the price.

Second, weighting the MHR equally with an AHR does not reflect the utilities' avoided costs because those costs should reflect the actual prices at time of delivery. If the Commission adopts a hybrid of MHR and AHR, PG&E proposes that a weighting of 10 percent for historic values, and a weighting of 90 percent for forward prices in the formula to result in a price that is closer to market than the proposal in the APD. This weighting would better reflect the avoided costs at the time of delivery and the reality of PG&E's current procurement practices than the APD's heavy reliance on non-relevant historic prices. Under this approach, PG&E customers will save \$105 million over the current SRAC pricing mechanism in 2008, instead of only \$65 million in 2008 under the APD's 50-50 approach.

Finally, both the revised PD and the APD use forward prices in the derivation of the MHR rather than historical prices as the original PD used. Thus there appears to be a consensus that forward prices are more reflective of current SRAC than historical prices are. The APD should reflect this by weighting the AHR by, at most, 10 percent.

V. THE PROPOSED LONG-TERM CONTRACT VIOLATES PURPA.

The APD, like the revised PD, requires the utilities to sign new five to ten-year firm contract at above-market prices. The APD, without explanation, increases the heat rate of the

^{26/} APD p. 62.

energy portion of the contract payment from that in the revised PD, resulting in an approximate all-in price of \$.083/kWh, a price which the APD indicates is higher than any of the QF proposals.^{27/} There is no evidentiary support cited for the all-in price, which is more than 10% higher than the all-in price in the IEP Settlement. The firm contract price does not reflect market prices, but merely estimates the capacity cost of a Combined Cycle Gas Turbine (CCGT) and adds in a high SRAC energy payment, which, as discussed above, also does not reflect market prices. This does not provide the incentives for these resources to be as efficient as possible nor does it pass on the full efficiency value of cogeneration technology to consumers. In fact, it rewards inefficiencies and passes the cogeneration benefits from consumers to project owners.

The proposed contract price does not reflect the market prices of the variety of alternative power supplies available to sell to the utilities. As one of the QF representatives testified, there are many other types of resources selling into the market:

Q: [I]s it your understanding that the market price referent used in the RPS proceeding is a market price?

A: I know that it is used as a threshold price that is computed on the basis of modern combined-cycle power plants. ***I don't think it necessarily represents market because the California market is made up of far more resources than modern combined-cycle gas-fired facilities.***^{28/}

To comply with PURPA, avoided costs must be based on actual market prices rather than speculation about the costs of one particular type of facility. The Federal Energy Regulatory Commission (FERC) has consistently ordered the Commission to consider the prices of all products available to the utility to establish the utility's avoided costs:

PURPA literally means that in calculating avoided cost rates for QF power, state authorities must determine the cost the utility avoids by considering the cost of all alternative sources of power available to the utility, not just the cost of a select group of resources.^{29/}

^{27/} APD, Table 7, p. 99.

^{28/} Tr. Vol. 25; 3765:19-26, RC/Tomeo; emphasis added. It would be mere speculation to assume a replacement facility is a CCGT as it is only one of the many types of facilities available to sell power to the IOUs. Tr. Vol. 30; 4332:27-28, 4338 CAC/EPUC/ Shoenbeck.

^{29/} *Southern California Edison Co.* (1995) 71 FERC ¶ 61,269, p. 62,080, emphasis added; see also *Public*

The only reasonable means to establish a long-term price for QFs that reflects all available sources and prices is to require the QFs to bid into the utilities' Request for Offers (RFOs) and obtain the price they bid if it is lower than alternative suppliers. As the FERC acknowledged almost 20 years ago:

Avoided cost need not be an administratively determined number, argued over by experts. Instead, avoided cost could be derived simply and directly from the prices offered by competing suppliers in [a] bidding process.^{30/}

The FERC has also explained that a utility has “no obligation under PURPA to purchase power offered at a higher price than the lowest bid” in a competitive solicitation.^{31/} “No preference for QF power justifies payment above levels arrived at by all source bidding, as such above-market prices would violate PURPA’s standard of ratepayer indifference.”^{32/} Competitive bidding will result in the lowest cost resources, accurately reflect the utilities’ avoided costs, and provide efficient and cost-effective QFs the firm capacity contracts they seek. The Commission should not order the utilities to sign the new firm capacity contract as priced in the APD.

VI. THE NEW AS-DELIVERED CONTRACT VIOLATES PURPA.

The APD errs in including a new “longer term” as-delivered contract option which it would require the utilities to execute even if they do not need the power.^{33/} The new contract option, like the long-term contract option, is not based on actual market prices and therefore does not reflect actual avoided costs. The new contract option is also unlawful because it: (1) requires the utilities to sign an unlimited number of agreements without any consideration of the utilities’

Service Company of New Hampshire (1998) 83 FERC ¶ 61,224 (“[O]ur precedent makes clear that a state must take into account all potential sources of capacity in determining avoided costs....”); *North Little Rock Cogeneration, L.P. and Power Systems Ltd.* (1995) 72 FERC ¶ 61,263 (“Avoided costs are determined... by all alternatives available to the purchasing utility. Those alternatives, as we have explained in a number of recent orders, include all supply alternatives.”); *Southern California Edison Co.* (1995) 70 FERC ¶ 61,215 at 61,677 (same).)

^{30/} *Regulations Governing Bidding Programs* (1988) 53 F.R. 9324, FERC Stat. & Reg., ¶ 32,455 p. 32,025, footnote omitted.

^{31/} *North Little Rock Cogeneration, L.P. and Power Systems Ltd.* (1995) 72 FERC ¶ 61,263.

^{32/} D.96-10-036, 68 CPUC 2d at 453.

^{33/} The APD does not specify the term of this contract.

resource needs; and (2) requires the utilities to purchase from power production facilities that do not meet federal standards for certification as a cogeneration QFs.

A. The APD's Failure To Limit The Availability Of The Third Contract Option To The Utilities' Needs Is Poor Resource Planning And Violates PURPA.

The Commission cannot require the utilities to enter into a standard offer contract without limiting the availability of the contract to the utilities' resource needs. The Commission has acknowledged that it was imprudent to make the original standard offer contracts available without limiting them to actual utility needs because the utilities ended up with much more power than needed to meet their net-open positions, costing the utility customers billions of dollars in overpayments.^{34/} The Commission later noted that its "considerable experience with QFs proves quite conclusively that efforts to address the quantity of QF subscription to a standardized offer without addressing the associated contract price [were] misguided and damaging."^{35/} The Commission should not repeat the errors of the 1980s by requiring another standard offer contracts for unlimited quantities.

The APD's new contract option is not only imprudent, it violates federal law. In *City of Ketchikan*, a QF sought "payment for capacity from [its] proposed project, regardless of whether [its] capacity is needed."^{36/} The FERC denied the request as "not required by PURPA or our regulations."^{37/} The FERC concluded: "We make this finding because, as we have stated previously, *there is no obligation under PURPA for a utility to pay for capacity that would displace its existing capacity arrangements.*"^{38/} "[W]hile utilities may have an obligation under

^{34/} D.98-09-040; 82 CPUC 2d 87, 92.

^{35/} D.96-10-036; 68 CPUC 2d at 442.

^{36/} *City of Ketchikan, Alaska, et al.* ("Ketchikan") (2001) 94 FERC ¶ 61,293, reh'g denied, 95 FERC ¶ 61,194 (2001), 94 FERC at 62,062.

^{37/} *Id.*

^{38/} 94 FERC at 62,061, footnote omitted, emphasis added, citing *Connecticut Light and Power Company* (1995) 70 FERC ¶ 61,012, reconsideration denied, 71 FERC ¶ 61,035 (1995), appeal dismissed, *Niagara Mohawk Power Corporation v. FERC* (D.C. Cir. 1997) 117 F.3d 1485 ("CP&L").

PURPA to purchase from a QF, that obligation does not require a utility to pay for capacity that it does not need.”^{39/} PURPA **does not** require the utilities to purchase unneeded QF power.^{40/}

A Standard Offer PPA available to all QFs could immediately result in oversubscription problems. The utilities do not purchase all QF power in the state and there is no record evidence of the amount of existing QF power that is not currently under contract with the utilities or the amount that might be constructed under the contract terms the APD proposes. If the APD is adopted, the utilities would be forced to file a complaint at the FERC to avoid oversubscription. The Commission should not adopt the APD’s plainly unlawful requirement that the utilities execute a new QF contracts without regard for the utilities’ need for such resources.

B. The Third Contract Option Unlawfully Requires The Utilities To Sign Contracts With Cogenerators That Are Not Certified As QFs.

The APD’s new QF contract option is inconsistent with the federal requirements a new cogeneration facility must meet to be certified as a QF and therefore exceeds the Commission’s limited jurisdiction under PURPA.^{41/} The FERC’s new cogeneration regulations require new or recertified QFs to prove their output is “fundamentally” for industrial, commercial, or institutional purposes, *not* for power sales to an electric utility.^{42/} The FERC’s regulations include a “safe harbor” under which QFs may demonstrate that at least 50% of the aggregated annual energy output of the facility will be used for industrial commercial, institutional or residential purposes, and not sold to a utility.^{43/} The APD, by contrast, would make QF contracts available to facilities sized 25 MW or smaller that use only 25 percent of their power internally.^{44/} It is unclear why the APD would propose to establish this conflict with the FERC’s

^{39/} 94 FERC at 62,062, citing *CP&L*.

^{40/} FERC Docket No. RM06-10-006, Notice of Proposed Rulemaking, *Regulations Applicable to Small Power Production and Cogeneration Facilities*, 71 FR 4532 p. 4533.

^{41/} FERC has exclusive authority to determine QF status. *Southern California Edison Company v. Public Utilities Commission*, 101 Cal.App.4th 384 (2002); *Independent Energy Producers Ass’n Inc. v. CPUC* (9th Cir. 1994) 36 F.3d 848, 856.

^{42/} 18 C.F.R. § 292.205(d)(2).

^{43/} 18 C.F.R. § 292.205(d)(3).

^{44/} APD, p. 121.

regulations. The Commission's ratemaking jurisdiction under PURPA does not extend to contracts with non-QF generators.

VII. CONCLUSION.

The MIF in the revised PD is much more solidly based on the record in this proceeding and is a much more reasonable approach to SRAC pricing than the APD's MIF. As discussed above, if the Commission does adopt the APD, it must change the weighting in the formula from 50 MHR/50 AHR to 90 MHR/10 AHR.

The Commission should not adopt the APD's additional standard offer contract. It is overpriced, unnecessary and illegal.

Respectfully submitted,

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September 10, 2007

APPENDIX A

Pursuant to Rule 14.3, PG&E provides the following proposed changes to the Proposed Decision's Findings of Fact and Conclusions of Law. Strikeout text identifies deletions; underscored text identifies additions.

Revisions to Findings of Fact:

17. ~~—The market price of energy at the NP15/SP15 trading points does not reflect the costs associated with out-of-market transactions entered into by the CAISO for market power mitigation and local reliability purposes.~~

19. ~~—Through their role as scheduling coordinators, the utilities could influence the market clearing price at the NP15/SP15 trading points.~~

20. Until MRTU is operational, SRAC energy prices should ~~reflect~~ incorporate power prices as reported at the NP15 trading point for PG&E, and at the SP15 trading point for SCE and SDG&E

23. A Market Index Formula based on ~~an average of~~ forward NP15/SP15 market prices ~~best~~ bestand the existing Commission adopted heat rates reasonably reflects the utilities' short-run avoided cost.

26. ~~—There is no compelling reason not to adopt the same variable O&M adder for all three utilities.~~

41. ~~—It is reasonable to allow new QFs under 25 MW that consume at least 25% of the power internally and sell 100% of the surplus to the utility to obtain an as-available standard contract.~~

42. ~~—It is inconsistent with Commission policy to CHP to allow new, small QFs to obtain standard contracts.~~

43. ~~—It is reasonable to state the 25 MW limitation as a annual GWh limitation of 164,250 MWh (25 MW X 8760 X 0.75).~~

New Findings of Fact:

Power prices reported at NP15 and SP15 are sufficiently robust and liquid to use in calculating the market heat rate.

Revisions to the Conclusions of Law:

8. ~~A decision to revise the Transition Formula, by itself, does not demonstrate that prices under the Transition Formula violate PURPA.~~

14. IOUs should modify their monthly SRAC energy prices using the MIF adopted in this order. IOUs should modify their posted as-available capacity prices consistent with this order.

18. Potential over-subscription due to new QF contracts ~~that are not covered by the small QF contract option~~ should be evaluated, first, through an IOU's long-term procurement plan.

19. The prospective QF Program contract options should be extended to QFs with existing standard offer contracts, including those that are, or were, on contract extensions set forth in D.02-08-071, D.03-12-062, D.04-01-050, and D.05-12-009. The prospective QF Program contract options are available to QFs who have not operated under standard offer agreements only if the QFs' net capacity does not exceed 20 MW. QFs with a net capacity exceeding 20 MW shall participate in the IOUs' solicitations or bilateral negotiations to obtain new agreements.

New Conclusions of Law:

The Topock border point is now sufficiently robust to use a simple average of the California/Arizona (Topock) indices and a simple average of the Northern California indices at Malin, Oregon for purposes of calculating PG&E's Modified Index Formula.

TOU/TOD factors shall be separately stated for energy and capacity, and shall not be based on the TOD/TOU factors used in RFOs with "all in" pricing.

The IOUs shall be required to pay for as-available capacity only if the utilities are permitted to count such capacity towards fulfilling their Resource Adequacy requirements.

The prospective QF Program contract options shall terminate upon the effective date of a Federal Energy Regulatory Commission order terminating the IOUs' mandatory purchase obligations under PURPA for the size of facility specified in FERC's order.

It is reasonable to reduce the ancillary services value proposed by SDG&E to \$10.15 kW-year.

CERTIFICATE OF SERVICE BY ELECTRONIC MAIL OR U.S. MAIL

I, the undersigned, state that I am a citizen of the United States and am employed in the City and County of San Francisco; that I am over the age of eighteen (18) years and not a party to the within cause; and that my business address is Pacific Gas and Electric Company, Law Department B30A, 77 Beale Street, San Francisco, CA 94105.

I am readily familiar with the business practice of Pacific Gas and Electric Company for collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, correspondence is deposited with the United States Postal Service the same day it is submitted for mailing.

On the 10th day of September 2007, I served a true copy of:

**OPENING COMMENTS OF PACIFIC GAS AND ELECTRIC COMPANY (U 39 E) ON
ALTERNATE PROPOSED DECISION OF COMMISSIONER GRUENEICH**

[XX] By Electronic Mail – serving the enclosed via e-mail transmission to each of the parties listed on the official service lists for R.04-04-003 and R.04-04-025 with an e-mail address.

[XX] By U.S. Mail – by placing the enclosed for collection and mailing, in the course of ordinary business practice, with other correspondence of Pacific Gas and Electric Company, enclosed in a sealed envelope, with postage fully prepaid, addressed to those parties listed on the official service lists for R.04-04-003 and R.04-04-025 without an e-mail address.

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this 10th day of September, 2007 at San Francisco, California.

/s/

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R0404003: Commissioner Assigned: Michael R. Peevey on April 6, 2004

ALJ Assigned: Carol A. Brown on August 12, 2004; **ALJ Assigned:** Mark S. Wetzell on April 6, 2004

R0404025: Commissioner Assigned: Michael R. Peevey on December 20, 2005

ALJ Assigned: Julie Halligan on April 28, 2004

CPUC DOCKET NO. R0404003-R0404025 (QF) CPUC REV 08-30-07

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